

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02..2005

CORAM

THE HON'BLE MR.MARKANDEY KATJU, CHIEF JUSTICE
and
THE HON'BLE MR.JUSTICE D.MURUGESAN

W.A.Nos.155 to 158 of 2004
and
W.A.M.P.Nos.258 to 261, 7406 and 7407 of 2004

The Tamil Nadu Cements Corporation Ltd.,
Rep. by its General Manager,
Alangulam Works,
Alangulam 626 127. ..Appellants in W.A 155 and 158/2004
Kamarajar Dt

The Tamil Nadu Cements
Corporation Ltd.,
rep by its General Manager
Ariyalur Works,
Ariyalur Cement Factory,
Ariyalur P.O.
Trichy District. Appellants in WA 156 & 157 /2004

Vs.

N.Pandurangan ..Respondent in W.A.155 of 2004
G.Manoharan ..Respondent in W.A.156 of 2004
G.Balasubramanian ..Respondent in W.A.157 of 2004
S.Veerapandian ..Respondent in W.A.158 of 2004

PRAYER: Appeals filed against the common order of the
learned Single Judge dated 11.12.2002, passed in W.P.Nos.
7660/94, 39816/96, 763/98 and 16386/2000, as stated
therein.

For Appellant :: Mr.V.Karthick
for M/s. T.S.Gopalan & Co.

For Respondents :: Mr.N.G.R.Prasad
for M/s.Row & Reddy

J U D G M E N T

THE HON'BLE THE CHIEF JUSTICE

These four writ appeals are filed against the common order of the learned single Judge passed in four connected writ petitions on 11.12.2002.

2. Heard learned counsel for the parties, and perused the records.

3. The writ petitioners prayed for quashing of paragraph-8 of the impugned circular in R.C.No.11677/B.L.4/89 of the respondent (appellant herein) dated 24.08.1993 discontinuing payment of subsidy interest to the Housing Development Finance Corporation (hereinafter referred to as HDFC), and for a consequential order directing the respondent in the writ petitions (the appellant) to continue to give subsidy interest towards house building advance and to refund the amount deducted from their salary towards subsidy to HDFC.

4. The petitioner in W.P.No.7660 of 1994 Mr.N.Pandurangan joined the service of the Tamil Nadu Cements Corporation Ltd. as typist in the year 1972 at their Alangulam works. The respondent is a Government of Tamil Nadu Undertaking and is a 'State' under Article 12 of the Constitution of India. The petitioner was promoted as Senior Typist in the year 1987. It is alleged that on 10.09.1992 his post was upgraded to the Managerial Cadre though his duties remained the same.

5. On 24.10.1989 the respondent-Corporation entered into a settlement under Section 12(3) of the Industrial Disputes Act, 1947 with various unions including its Staff Association providing for House Building Advance. At that time the petitioner was a member of the Staff Association. As per the terms of the said settlement, an employee could avail House Building Advance from HDFC, and the HDFC used to charge 14% interest per annum on the loans so advanced. As per the terms of the settlement the employees had to pay 6% interest per annum and the interest exceeding 6% had to be borne by the respondent-Corporation. The employee, who had put in 10 years of service and had 7 years of service left, could avail of the loan.

6. According to the notice dated 05.05.1990, the workers, who are covered by the Cement Wage Board were eligible to get Rs.75,000/- towards House Building Advance. The petitioner in W.P.No.7660 of 1994 availed House

Building Advance of Rs.60,000/- and the first instalment was disbursed on 1.4.1990. On 18.09.1992 he was upgraded to managerial cadre.

7. It is alleged in paragraph - 8 of the petitioner's affidavit filed in support of the writ petition in W.P.No.7660 of 1994 that the respondent-Corporation put up the impugned Circular dated 24.08.1993 stating that the persons who had been promoted from workmen category to managerial cadre will not get the benefit of subsidised interest which in this case works out to 8% per annum. In short the petitioner had to bear the interest burden of 8% which worked out to Rs.49,126/- in his case. It is further alleged that had he known of this discontinuation of subsidy, he would not have availed of the loan itself. Further, the terms of the settlement dated 24.10.1989 does not envisage such a contingency. The petitioner made a representation to the General Manager, and Chairman and Managing Director of the respondent-Corporation, but to no avail. On the other hand, the respondent-Corporation has started deducting the subsidy interest of 8% from October 1993, which according to the petitioner is illegal. It is further alleged by the writ petitioner in W.P.No.7660 of 1994 that there is no provision in the settlement dated 24.10.1989 under Section 12(3) of the Industrial Disputes Act, 1947 that in the event of an employee moving to the managerial cadre the interest subsidy on the House Building Advance will not be available to him. It is also alleged that the respondent-Corporation has no jurisdiction to stop the interest subsidy of 8% when the petitioner was moved into the managerial cadre.

8. A counter affidavit has been filed by the General Manager of the respondent-Corporation, and we have perused the same. It is alleged in paragraphs 3 and 4 that when the petitioner joined the services of the respondent-Corporation, he was a 'workman' within the meaning of the word 'workman' as defined in the Industrial Disputes Act, 1947, and hence, he was governed by the provisions of the said Act. On and from 10.09.1992 he came into managerial cadre, and hence, he ceased to be a workman, and therefore, the Industrial Disputes Act, 1947 has ceased to apply to him. It is further alleged that the terms of the settlement under Section 12(3) of the Industrial Disputes Act, 1947 were made applicable only to a 'workman' governed by the Industrial Disputes Act, 1947. Once a person ceases to be a 'workman' he is not entitled to get the benefit of that settlement. The petitioner is entitled to get interest subsidy from the date of the grant of the loan up to the date of his promotion to the managerial cadre and not thereafter.

9. It may be mentioned here that whereas the petitioner in W.P.No.7660 of 1994 Mr.N.Pandurangan had obtained the loan prior to the circular dated 24.08.1993, the other writ petitioners in the connected writ petitions obtained loans after the circular dated 24.08.1993. However, in our opinion, that will not make any difference in this case.

10. The facts of the case reveal that on 24.10.1989 a settlement was reached under Section 12(3) of the Industrial Act, 1947 between the appellant and the unions governing the workmen of the appellant in various factories. Caluse - 3 of the settlement envisages that the workmen would bear 6% of the interest in respect of the loans taken by them from the Housing Development Finance Corporation, and the interest over and above 6% would be borne by the Appellant. In other words, the workmen were given a subsidy on interest towards repayment of loans obtained by them for house building. It was also provided that the interest would be payable from 24.10.1989 onwards. On 24.08.1993 the appellant issued a Circular. Caluse-4 of the Circular is as under:-

"An employee will be paid a maximum of Rs.75,000/- only", though no such clause was stipulated in the settlement.

11. Clause - 8 of the impugned Circular reads as under:-

"The interest subsidy which was given as per the recommendations of the Cement Wage Board Award to eligible employees drawing salary and those who had already received their loan amount under the Scheme will not be eligible for further interest subsidy in the event of their getting promoted to higher grades (management cadre). Hence, deductions will be made in respect of those employees who had already received their loan amount and who had been promoted from the date of such promotion. Deductions will be made as per the existing rates that were prevailing before the promotion."

The Circular therefore envisages that interest subsidy would not be payable in respect of persons who were promoted to the managerial cadre from the date of promotion.

12. The writ petitioner in W.P.No.7660 of 1994/Appellant in W.A.155 of 2004 availed a housing loan in July 1991 when he was in the workman cadre. On 10.09.1992 he was promoted to the managerial cadre. After the Circular dated 24.08.1993, the respondent-Corporation withdrew the

interest subsidy and the writ petitioner-appellant challenged the Circular dated 24.08.1993 by filing W.P.No.7660 of 1994. The other three respondents availed their housing loan during March 1997, September 1994 and July 1994 respectively, and on their promotion to the managerial cadre the interest subsidy was sought to be discontinued and they filed W.P.Nos.16386 of 2000, 763 of 1998 and 39816 of 1996. By a common order dated 11.12.2002, the learned single Judge held that it is not specifically provided that the settlement would be applicable only as long as the employee continues to be at that level, and not if he attains any promotion to the managerial level, that there has been no change or amendment to the settlement, that the settlement envisages promotion to the managerial cadre on completion of 10 years, that it would not be possible to reconcile with the terms of the Circular that an employee being promoted should be deprived of the interest subsidy, and that the intention behind the settlement cannot be whittled down by a circular. The learned single Judge also made a reference to the fact that the respondents in W.A.Nos.156 to 158 of 2004 had availed of the loan when they were aware of the circular, but as he had held that the circular is invalid, he directed that the benefits should be extended to them also.

13. The learned counsel for the appellants submitted that the settlement dated 24.10.1989 would be applicable to workmen as long as they remain in the cadre of workmen, and would not be applicable the moment they ceased to be workmen and came into the managerial cadre. The Circular dated 24.08.1993 applies only to those who have ceased to be workmen. Hence, he submitted that the order of the learned single Judge deserves to be set aside.

14. We have carefully perused the settlement dated 24.10.1989 entered under Section 12(3) of the Industrial Disputes Act, 1947, the translated English copy of which is supplied to us. Clauses 1 to 5 of the said settlement provides as follows:-

Clause-1: The management is giving rotating fund and house building loan facility as per the Award of the Cement Industry Wage Board. For the workers to whom the Cement Wage Board recommendations are applicable, loans will be granted through the Housing Development Finance Corporation (HDFC). That loan will be granted subject to the conditions of the Housing Development Finance Corporation.

Clause-2: For repayment of the loan, the maximum amount to be recovered from the salary should be in such a way that it shall not exceed

the permissible recovery amount as laid down in the Payment of Wages Act.

Caluse-3: The Labour should bear 6% of the interest to be paid to the Housing Development Finance Corporation towards the loan availed. Beyond that the management shall make the payment.

Clause-4: For availing this loan, the workers should have at least 10 years of regular service. Further, they should have 7 years for superannuation. Further, it will be given after verifying whether the worker has the capacity to repay the loan.

Caluse-5: If already the workers had availed the loan from the Housing Development Finance Corporation are eligible as aforesaid, the management will bear the interest from 24.10.1989 for them. For those who had availed the loan without eligibility for obtaining the housing loan facility, the management will pay the interest on the date when they acquire the eligibility.

15. Admittedly, the House Building Advance Subsidy was sanctioned when the respondents were workmen. The settlement provided that on completion of 10 years of service the workmen will be given managerial cadre. Hence Mr.N.Pandurangan came to managerial cadre on 10.10.1992 while Mr.S.Veerapandian came to the managerial cadre on 12.02.1996. In our opinion, the learned single Judge has rightly held that when the House Building Advance Subsidy was given to the writ petitioners they were in the workmen cadre and in the settlement it is nowhere provided that on their being moved to the managerial cadre the subsidy will be stopped. In our considered opinion, the management cannot deviate from the bilateral settlement by the unilateral Circular dated 24.08.1993.

16. In L.I.C. Vs. D.J.Bahadur and Others, AIR 1980 SC 2181 the Supreme Court observed that even if notice under Sections 9-A and 19(2)(6) of the Industrial Disputes Act, 1947 was given the settlement does not suffer death merely on giving such notice. The Award or Settlement will continue to be operative quo-contract.

17. The aforesaid decision was followed in Karnataka State Road Transport Corporation Vs. KSRTC Staff & Workers' Federation and Another, (1999) 2 SCC 687. In Karnataka State Road Transport Corporation case it was observed that in the absence of a fresh settlement superseding the

earlier one, the efficacy and binding nature of the earlier settlement will continue to survive. Hence, the unilateral order of the Government was illegal and uncalled for. The Supreme Court further observed that the State Government cannot issue directions to the Corporation to commit breach of a binding settlement operative between the parties. In our opinion, the aforesaid decision squarely applies to the facts of the present case.

18. The contention of the management that some of the employees were granted House Building Advances after the issuance of the impugned Circular has in our opinion, no consequence because the said Circular itself is illegal, in view of the decision by the Supreme Court in Karnataka State Road Transport Corporation case (cited supra). If that contention is accepted, the writ petitioner in W.P.No.7660 of 1994 Mr.N.Pandurangan will lose Rs.49,126/- and the writ petitioner in W.P.3981 of 1996 Mr.S.Veerapandian will lose Rs.61,086/-. Moreover, it is settled law that since labour legislation is beneficial legislation, if two views are reasonably possible, the view in favour of the employees should be accepted, vide K.C.P. Employees' Association, Madras Vs. Management of K.C.P. Ltd., Madras & Other, (1978) 2 SCC 42 in which the Supreme Court observed:

"In Industrial Law, interpreted and applied in the perspective of part IV of the Constitution, the benefit of reasonable doubt on law and facts, if there be such doubt, must go to the weaker section, labour".

In Alembic Chemical Works Co. Ltd. Vs. The Workmen, AIR 1961 SC 647 the Supreme Court observed (vide paragraph - 7) that in a welfare legislation where two constructions of the statute are possible, the one which is more beneficial to the employees should be adopted, (See also Ramesh Metal Works and Another Vs. State, 1962 (1) LLJ 169, General Secretary, Cochin Port Wharf Staff Association Vs. Chairman, Cochin Port Trust and Others, 1982 (1) LLJ 173, etc.,).

19. In view of the above there is no force in these appeals, and accordingly they are all dismissed. No costs. Consequently, connected W.A.M.Ps. are also dismissed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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Copy to: -

1.The General Manager,
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2.The General Manager,
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2 cc to T.S. Gopalan, SR. 3982
2 ccs to M/S. Row & Reddy, SR. 3845 & 3846

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TS (CO)
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